

CHARTER REVIEW COMMISSION MINUTES

June 6, 2013

The Charter Review Commission met at 5:30 p.m. in the Municipal Building Conference Room on the 6th day of June, 2013, and notice and agenda of the meeting were posted in the Municipal Building at 201 West Gray and the Norman Public Library at 225 North Webster 48 hours prior to the beginning of the meeting.

Item 1, being:

CALL TO ORDER AND ROLL CALL.

PRESENT:

Ms. Jane Abraham
Mr. Trey Bates
Mr. Doug Cubberley, Vice-Chairman
Ms. Carol Dillingham
Mr. Harold Heiple, Chairman
Mr. Hal Ezzell
Ms. Samantha Kahoe
Mr. Ken McBride
Mr. Kevin Pipes
Mr. Richard Stawicki
Mr. Bob Thompson

ABSENT:

Mr. Thad Balkman

TARDY:

Mr. Barry Roberts

STAFF PRESENT:

Mr. Jeff Bryant, City Attorney
Mr. Anthony Francisco, Director of Finance
Ms. Brenda Hall, City Clerk
Mr. Ken Komiske, Director of Utilities
Ms. Kathryn Walker, Assistant City Attorney

Item 2, being:

CONSIDERATION OF APPROVAL OF THE CHARTER REVIEW COMMISSION MINUTES OF MAY 2, 2013.

Member McBride moved that the minutes be approved and the filing thereof be directed, which motion was duly seconded by Member Dillingham;

Items submitted for the record

1. Charter Revision Committee minutes of May 2, 2013

and the question being upon approval of the minutes and upon the subsequent directive, a vote was taken with the following result:

YEAS:

Members Abraham, Bates, Cubberley, Dillingham, Ezzell, Kahoe, McBride, Pipes, Stawicki, Thompson, and Chairman Heiple

NAYES:

None

Chairman Heiple declared the motion carried and the minutes approved; and the filing thereof was directed.

Item 3, being:

CONTINUED DISCUSSION OF ARTICLE XVI, SECTION 2, TO CONSIDER WHETHER THE CITY COUNCIL SHOULD BE EMPOWERED TO INCREASE UTILITY RATES NOT MORE THAN THREE PERCENT (3%) ANNUALLY WITHOUT REQUIRING A CITY WIDE VOTE AND POSSIBLE ACTION.

Chairman Heiple said during the meeting in May, the Charter Review Commission (CRC) began discussion regarding the Charter requirement that utility rates could only be increased by a vote of the people. He said the CRC can leave the provision in, take the provision out completely, or suggest an alternative. He said CRC members requested additional information regarding historical utility rates in Norman and a comparison of rates to other benchmark communities.

Mr. Ken Komiske, Director of Utilities, highlighted the historical utility rates. He said if the City had the ability to raise rates incrementally, as needed, over \$5 million dollars in revenue would have been generated for residential water usage, \$12 million for water reclamation, and \$12.5 million for sanitation services. He said Norman has one of the lowest utility rates when compared to other communities in Oklahoma. Chairman Heiple said a gradual increase of rates would have allowed rates to level off over the years and would not be as high as they are today.

Member Dillingham asked if there is anyone in the community the CRC should have testimony from because this issue will garner politically charged discussions. Chairman Heiple asked if she had someone specific in mind and Ms. Brenda Hall, City Clerk, said a public hearing will be held at the end of June for public input and the CRC may choose to discuss this issue further after the public hearing prior to making its final recommendations to Council.

Member Dillingham asked Mr. Anthony Francisco, Director of Finance, if Council changed the Charter to some theoretical percentage did he have any idea what that percentage would need to be. Would three percent (3%) be enough and would six percent (6%) be too much? Mr. Komiske said there is no crystal ball, but as an example, Oklahoma City (OKC) establishes their rates for a three year period and recently raised their water rates by four percent (4%). He said OKC also publishes their rates so businesses or anyone interested in moving to OKC will know what the rates are for the next three years. Member Dillingham said she did not know whether the business or development community that changing the Charter provision by itself would so negatively impact businesses that someone may not want to open a business in Norman.

Chairman Heiple asked Member Abraham, who is employed by the City of OKC, if there has been any reaction from people of minimal income in OKC complaining about a four (4%) percent increase and she said there has been no significant, negative public outcry. She said OKC's rationale is that an incremental change over time that is well published and backed up by infrastructure needs is appropriate. She said the water utility in OKC is supported by rate payers and is a self-contained public utility so rate increases are not going to fund anything other than that utility's needs. Member Dillingham asked if OKC has a hardship exception and Member Abraham said yes, rate payers can round-up their utility bill and that overage funds hardship cases.

Chairman Heiple said if the CRC is going to recommend a percentage, language should be included that allows the City Council to set planned future programmed increases. He said Member Thompson has expressed that he does not want to change the provision and asked Members their opinion on whether to eliminate the provision or set a percentage.

Member Thompson said for his own clarification, if the Charter provision was eliminated completely would the rate increase be subject to a vote of City Council only, and if the percentage option were to be used, what would happen if the percentage did not meet the costs. He said if the City has a very large project on the horizon, that would need to be calculated into the percentage.

Item 3, continued:

Member Pipes said what he is hearing is Norman cannot participate in regional water discussions or pay for future utility needs with a percentage cap because there will continue to be major capital improvement projects.

Member Ezzell said to say the principle driver behind changing the provision is participation in a Regional Water Trust Authority is an oversimplification. He said there are a lot more moving parts that impact the decision than whether or not Norman can participate in regional water discussions. He said that is just one consideration of many and it is the CRC's duty to make a recommendation and if Council chooses to moderate or compromise that then that is their choice to do when they are hearing input at that time. He felt the CRC should push forward a clear recommendation with language and a basis for that language, but not push forth multiple alternatives.

Member Bates said there are three reasons he supports eliminating the provision altogether. 1) It would resolve a number of problems such as the regional water solution, problems with the way the rates are managed, and the difficulty of planning for the future due to the restrictive provision. 2) Members need to be sure they are comfortable that they are not opening a Pandora's Box or being accused of that; however, the easiest way to prove it is not true is to look at other communities who do not have such a restriction and have not allowed their rates to get so out of control that their citizens are not protected. He said look at other communities and say, "Ok, well those communities have not gone crazy with their rates, why do you expect Norman to go nuts?" That would not make sense because there is no foundation for it. 3) The basis for this Charter provision and the reason Norman is the only community to have this provision in the first place is not applicable anymore. At the time this provision was enacted, the City was actually trying to generate revenue for the general operation of the city on the back of water rates. That circumstance and environment provided for that situation no longer exists. He said the ability to play well with other communities, address long term water needs, and be in control of our own destiny is definitely limited when the City cannot even control their own rate structure. He said at the end of the day there is a bunch of scariness out there, but no other community that allows their Utility Department to raise and manage their rate structure has gone amuck. He said you can point to every other community and say there are sufficient checks and balances and oversight to ensure such thing would not happen.

Member Cubberley said a fourth reason is that it is expensive. He said it costs the City money to keep this Charter provision and the cost is in deferred maintenance, in selling bonds, in insurance paid on the bonds, and the higher rate the City has to pay on bonds. He said there is a cost attached to this provision and that is the reason he has concluded the provision does not make sense. He said Member Bates pointed out some very good reasons for eliminating this Charter provision and felt the CRC should forward that recommendation to Council. Member Stawicki pointed out it also costs money for the elections themselves.

Member Roberts said it sounds like an all or nothing scenario. If the CRC recommended a percentage that was not functional in terms of the water utility it would be self-defeating and there would be no point in making that change. He said if the CRC forwards that recommendation to City Council then they have not helped much at all. Member Dillingham agreed and said setting some percentage does not solve the problem of making sure the City can meet additional costs of capital projects as capital projects can be very costly. She said if the City encountered some type of cataclysmic event such as a tornado that destroys one of the treatment plants and the City could only raise rates up to four percent (4%) the City will still be in the same shape of having to sell bonds and defer maintenance so she would like to eliminate the provision entirely. She said Enterprise Funds by themselves have solved the initial problem of using the monies for anything other than what they are meant to be used for.

Member McBride agreed and said if Council is not responsive to the needs of the citizens, the citizens have recourse. He said citizens trust Council with so many other important financial decisions for the City. He said there are a lot of moving parts and it is difficult to anticipate how complex future water needs may be and what future water decisions will need to be made. He said sometimes the City may not have the luxury of time to hold

Item 3, continued:

an election in order to make those decisions. He said it may end up costing the City a lot of money to be a retail purchaser of water in a circumstance where the City could have participated in some type of wholesale purchase of water through a regional water agreement. He said eliminating the provision could save the City millions of dollars and the circumstances that gave rise to this provision no longer exists, has not existed for years, and there is no justification for the provision. Member Dillingham said that is the other reason that needs to be added to the list reasons to get rid of the provision. She said the choice between being able to elect your City Councilmember who is going to make decisions is so much better than simply being a customer of some other entity where you have absolutely no control over your rates.

Member Thompson disagreed with some of the points raised. He said there has always been a philosophical division between growth and no growth in Norman and there is always controversy about the strength of the pro-business, pro-development community and this is one of their issues. He said when he was on Council there were enough votes that Council could have shoved through a Stormwater Master Plan if they had wanted to. He said that could have been a very costly disaster for the development community as a utility with long term commitment to the community. He said Council was held back from doing that because it would have taken a vote of the people and that is a very complex thing. At that point, this Charter provision proved itself to not just be a protector of the residential community, but also a protector of the community as business people. He said it serves to limit the ambition of one side of the community versus the other. Chairman Heiple felt the difference between the Stormwater Master Plan, which was such a multi-faceted, hugely expensive monster and the simple question of do we or do we not get rid of this provision is like night and day in comparison.

Member Stawicki said he would support the majority decision of this committee on this subject only because citizens have the right to vote on the changes; however, he felt if Council wants this to pass there needed to be restrictions.

Member Kahoe moved to approve a recommendation that Council submit to the voters the question of removing Article XVI, Section 2, from the Charter in its entirety, which motion was duly seconded by Member McBride;

Items submitted for the record

1. Memorandum dated June 3, 2013, from Kathryn L. Walker, Assistant City Attorney, through Jeff H. Bryant, City Attorney, to Members of the Charter Review Commission
2. PowerPoint presentation entitled, "Charter Review Commission, Article XVI, Section 2, Public Utilities," dated June 6, 2013

and the question being upon approving a recommendation that Council submit to the voters the question of removing Article XVI, Section 2, from the Charter in its entirety, a vote was taken with the following result:

YEAS: Members Abraham, Bates, Cubberley, Dillingham, Ezzell, Kahoe, McBride, Pipes, Roberts, Stawicki, and Chairman Heiple

NAYES: Member Thompson

Chairman Heiple declared the motion carried and a recommendation that Council submit to the voters the question of removing Article XVI, Section 2, from the Charter in its entirety, was approved.

Item 3, continued:

Member Roberts wanted clarification on the vote. He asked if this recommendation means the ultimate result for the removal of this provision would place the rate increase decisions strictly within the vote of the City Council and Chairman Heiple said that is correct. Member McBride said removing this provision would make the Charter more consistent with every other City in the State. Member Pipes said there is one other town in Oklahoma that has some type of provision similar to Norman's and Mr. Jeff Bryant, City Attorney, said that was Chickasha, but they repealed that provision.

*

Item 4, being:

BEGIN REVIEW OF ARTICLE XX TO CONSIDER AMENDING OR UPDATING THE REAPPORTIONMENT COMMISSION PROCESS OR PROCEDURE.

Ms. Hall said Council requested Article XX be reviewed because the Charter currently states the Reapportionment Commission has to meet every year to review Ward boundaries to determine if population has changed such that the boundaries need to be adjusted. She said the Charter states a specific time and date when the Commission must meet. She said there are many years in which the Reapportionment Commission makes no recommendation so it was suggested the Commission meet during Census years only. Chairman Heiple asked former Councilmembers their thoughts on the matter and Member Cubberley said when he was on Council he represented an area that had three different Councilmembers in three different Wards over a ten year period. He said citizens have no chance to get to know their Councilmember and there is tremendous confusion on behalf of the voters when they get ping ponged around. He said there is a good reason to review the population every census year, but the constant yearly threat of changes just because there may be a population increase in a Ward is not really good. He said the changes usually occur in small areas that are contiguous to other Wards. He felt every ten years would be adequate for review of Ward boundaries.

Member Thompson said another problem is the Reapportionment Commission makes a recommendation and Council decides not to follow that recommendation and makes no changes. Members of the Reapportionment Commission were insulted they had spent so much time working on changes and Council did not follow the recommendation.

Chairman Heiple said Charter language is conflictive and should have been changed years ago. He suggested deleting the second paragraph of Article XX, Section 2, and asked Staff to provide language for review at the next meeting. Mr. Bryant said Staff would draft language to follow Federal law.

*

Ms. Hall said the next public hearing needs to be held in late June and Chairman Heiple suggested Thursday, June 27, 2013, at 6:30 p.m. He said there will be no meeting in July and meetings will resume August 1, 2013.

*

Item 5, being:

ADJOURNMENT.

Chairman Heiple declared the meeting adjourned at 6:27 p.m.